



COMMONWEALTH of VIRGINIA

Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221

JOINT MEETING

STATE REVIEW BOARD and BOARD OF HISTORIC RESOURCES

9:30 a.m., June 12, 2025

Ratcliff Hall, Longwood University, 310 Buffalo Street, Farmville, Virginia 23909

EASEMENT PROGRAM
BOARD PACKET

**Provided to the
Virginia Board of Historic Resources**

June 2, 2025

EASEMENT POLICY UPDATE



VIRGINIA BOARD OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #13

Conversion/Diversion of Easement Properties

The Virginia Open-Space Land Act¹ (“**OSLA**”), enacted by the General Assembly in 1966, authorizes any public body, defined, in part, as state and local governments having authority to acquire land for public use, to acquire “title to or any interests or rights of not less than five years’ duration in real property” for the perpetual preservation of open-space land. As a public body, the Virginia Board of Historic Resources (“**Board**”) holds historic preservation and open-space easements on historically significant properties pursuant to the OSLA.² These easements are administered by the Virginia Department of Historic Resources (“**DHR**”).

Easements held by the Board under the OSLA (“**OSLA Easements**”) are interests in real property owned by the Commonwealth of Virginia.

Section 10.1-1704 of the Code of Virginia, a part of the OSLA, provides, in part, that “[n]o open-space land, the title to or interest or right in which has been acquired under [the OSLA] and which has been designated as open-space land under the authority of [the OSLA], shall be converted or diverted from open-space land use unless” a series of rigorous statutory conditions are satisfied.

Conversion generally refers to a change in the use of property subject to an OSLA Easement and designated as open space land under the OSLA (“**Easement Property**”), either whole or in part, that is different from, and incompatible with, its dedicated open-space uses.

Diversion implies that the proposed project or activity is so incompatible with the conservation purposes of the OSLA Easement that the restrictions imposed by the OSLA Easement must be

¹ Va. Code §§ 10.1-1700, *et seq.* (1950, as amended).

² The Board also holds easements pursuant to Section 10.1-2204(A)(4) of the Code of Virginia (“**2204 Easements**”). If a 2204 Easement either (i) contains a term incorporating the conversion or diversion provisions of the OSLA into such easement or (ii) otherwise contains conversion or diversion provisions therein, then this policy will govern the evaluation of any requests for conversion or diversion of property subject to such 2204 Easement. For purposes of evaluating conversion and diversion requests of property subject to such 2204 Easements under this policy, such 2204 Easements will be treated the same as OSLA Easements under this policy, unless the terms of such 2204 Easement provide otherwise.

removed, either in whole or in part, and that appropriate substitute land will be placed under an OSLA Easement to replace the land being diverted.

If an Easement Property owner or third party (either, a “**Project Proponent**”) desires to commence a project, activity, or other undertaking on an Easement Property that that may result in the conversion or diversion of any portion of such Easement Property to a use not compatible with the OSLA Easement’s protections (a “**Project**”), then such Project Proponent must submit a project review form to DHR prior to commencing the Project. .

Section 10.1-1704 sets a rigorous standard that must be met for a Project to be eligible for conversion or diversion and also requires that specific conditions be met to the satisfaction of the Board. The OSLA provides very limited flexibility for Projects to impact an Easement Property, while ensuring land of comparable conservation quality and quantity is preserved in perpetuity.

Easements subject to Open-Space Land Act

The OSLA outlines a process by which Easement Property may be converted or diverted from its use as open-space land, provided the requirements of Section 10.1-1704 are met. Section 10.1-1704(A) states that:

- A. *No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless: (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.*

The process, as set forth above, requires three steps:

1. The Board must determine whether the Project is essential to the orderly development and growth of the locality and conforms to the official comprehensive plan for the applicable locality.
2. The Board must evaluate the substitute land offered, as to whether it is:
 - of at least equal fair market value;

- of greater conservation value as permanent open-space land than the Easement Property affected; and
 - of reasonably equivalent usefulness and location.
3. The Board must ensure that the substituted land is placed under an open-space easement and made subject to the provisions of Section 10.1-1704.

Any Project affecting an OSLA Easement that may constitute conversion or diversion must be reviewed by the Board. The Board retains the exclusive authority in making determinations regarding conversion or diversion.

To assist the Board with its assessment, DHR Easement Program staff will perform a preliminary review to determine whether a proposed Project may constitute conversion or diversion and require review by the Board. DHR Easement Program staff work with the Project Proponent and compile detailed information about the Project, to determine whether the Project is consistent with the terms of the OSLA Easement, to provide guidance as to the nature and extent of appropriate land substitution, and to set out how the proposed conversion or diversion may or may not meet the requirements of Section 10.1-1704. Staff may develop recommendations to avoid conversion or diversion of Easement Property. After the information gathering process is complete, Easement Program staff will present the Project to DHR's Easement Acceptance Committee ("**EAC**") for review. The EAC will consider the request and provide a recommendation to the Board. Easement Program staff does not make a final determination regarding whether a given Project constitutes conversion or diversion, or the appropriateness of substitute land, but will present all relevant material to the Board for its consideration.

The following factors, among other, may be applicable in DHR Easement Program staff's threshold determination of whether the Project should be reviewed by the Board as a possible conversion or diversion:

- Permanent change to the use of the Easement Property or portion thereof that is inconsistent with the purposes and stated conservation values of the OSLA Easement or is otherwise prohibited by the OSLA Easement.
- Prolonged or permanent use or activity that is inconsistent or incompatible with the preservation purpose and/or conservation values protected by the OSLA Easement.
- Installation of a structure or facility that is not otherwise permitted by the OSLA Easement.
- Permanent conveyance of a portion of the Easement Property in fee simple to a third party where the conveyance is not a permitted division of the Easement Property under the OSLA Easement and where the purpose of that conveyance is not consistent with the purposes of the OSLA Easement.

A proposed Project reviewed by DHR and the Board pursuant to Section 10.1-1704 may take a year or more to complete, as several Board meetings may be necessary to review a proposed Project in its entirety.

The burden to satisfy Section 10.1-1704 rests entirely with the Project Proponent. The Project Proponent must document that the Project is essential to the orderly development and growth of the locality and conforms to the local comprehensive plan. If the Board determines that the Project constitutes conversion or diversion and that it meets the essentiality and comprehensive plan conformity requirements outlined in step one of the review process above, the Project Proponent must work with DHR Easement Program staff to identify appropriate substitute parcels of land. Due to the unique characteristics of every historic property, identifying potential appropriate and compatible substitute parcels will require diligence and careful research. In order for the Board to compare the fair market value of the substitute property to the Easement Property, the Project Proponent must obtain appraisals of both properties. The value of the substitute property and the Easement Property must be substantiated by an appraisal that conforms to the Universal Standards of Professional Appraisal Practice (“**USPAP**”) and is prepared by a certified general real property appraiser licensed in Virginia who meets the Appraiser Qualifications Board’s professional accreditation standards.

The Board may impose conditions to mitigate the impact of any Project that results in conversion or diversion and may require evaluation of alternative substitute property. Failure to obtain the Board’s approval for any Project constituting conversion or diversion means the Project shall not proceed. If the Board determines that the Project does not constitute conversion or diversion, Easement Program staff will review the proposed Project according to Easement Program *Policy #5: Project Review*.

Review by the Board of Historic Resources or DHR’s Easement Program staff of any Project affecting an Easement Property is entirely separate from and does not satisfy compliance review under state law, the National Historic Preservation Act, as amended, or any other federal, state, or local regulation. Project Proponents should contact the Director of DHR’s Review and Compliance Division to coordinate any necessary and appropriate environmental regulatory review.

Examples of Projects requiring Board review for a determination of conversion or diversion may include, but are not limited to:

- Installation of a new gas line with a corresponding permanent easement for benefit of the gas company where the purpose of the line is gas transmission, and the line does not serve the Easement Property.
- Widening of an existing overhead electrical transmission line with a corresponding permanent easement for the benefit of the utility company and where the purpose of the line is to provide electrical service to properties other than the Easement Property.

- Installation of an underground sewer pipeline with a corresponding permanent easement for benefit of the local government where the purpose of the sewer line is to serve adjacent properties and the line does not serve the Easement Property.
- Conveyance in fee simple of the Easement Property or a portion thereof to a utility company or state or local government agency for construction or installation of public utilities or facilities such as a road, sewer or water lines, school, airport, etc.

Battlefield Easements acquired with Federal Grant Funding

All OSLA Easement whereby the Easement Property or the OSLA Easement were acquired using a Battlefield Land Acquisition Grant (“**BLAG**”) awarded through the American Battlefield Protection Program (“**ABPP**”) of National Park Service are subject to 54 U.S.C. § 200305(f)(3) of the Land & Water Conservation Fund (commonly known and hereinafter referred to as “**Section 6(f)(3)**”). Section 6(f)(3) imposes requirements regarding conversion and diversion and the American Battlefield Protection Program Authorization of 2009 (54 U.S.C. § 308103) assigns responsibility for such determinations to the ABPP.

Section 6(f)(3) states that no real property or interest in real property (easement) acquired or developed with grant assistance shall be converted or diverted from its conservation or battlefield preservation uses, other than with the approval of the Secretary of the Interior acting through the ABPP, and only upon the substitution of other land of equal market value and of reasonably equivalent usefulness and location for conservation and battlefield preservation purposes, which land is to be perpetually protected for conservation and battlefield preservation purposes.

Under the specific terms of each OSLA Easement for such battlefield Easement Properties, DHR Easement Program staff are generally required to notify ABPP of any proposed conversion or diversion and provide a written opinion as to whether the activity proposed constitutes conversion or diversion and whether the proposed substitute land is adequate.

Any Project involving a battlefield OSLA Easement subject to the OSLA and Section 6(f)(3) will require independent consideration by both the Board of Historic Resources under Section 10.1-1704 of the OSLA and by the ABPP under Section 6(f)(3). The Project Proponent should contact DHR Easement Program staff to coordinate the review processes to the greatest extent possible.

Fees

All applicable fees for review of potential conversion or diversion will be assessed consistent with Easement Program *Policy #12: Administrative Fees* and the published Easement Program Administrative Fees Billing Statement. If Easement Program staff determines that a Project review request requires a conversion or diversion determination by the Board, the Conversion/Diversion Review Fee is due prior to staff conducting its review. If the Project also involves review under Section 6(f)(3), that fee will also be due prior to staff conducting its review. The fees are assessed per each individual Easement Property impacted by the request. Easement Program staff will not

prepare or present a conversion or diversion Project to the Board until all fees are paid in full. Should the Board determine that the request constitutes Conversion/Diversion, the Conversion/Diversion Processing Fee will then be due. Should the request require Easement Program Staff time in excess of forty (40) hours, additional fees may be applicable.

Project Qualifications

1. Essentiality

DHR strongly encourages Project Proponents to avoid impacts to Easement Properties protected by OSLA Easements, including, but not limited to, public utility expansion, transportation, and infrastructure projects. In rare instances where avoidance is not possible, DHR will work to minimize any impacts to the Easement Properties, their conservation values and public interest.

Typical Project Proponents are localities, other state agencies, federal agencies, or utility companies. The Project Proponent bears the responsibility of demonstrating, to the Board's satisfaction, that the Project is essential to the orderly development and growth of the locality. The Project Proponent must provide examples of all alternatives considered and explanations as to why those alternatives were not implemented. Clear evidence illustrating the lack of feasible alternatives is required; *cost-effectiveness will not be considered a viable reason for a conversion or diversion.*

2. Compliance with Comprehensive Plan

The Project Proponent must demonstrate to the Board that the proposed Project is consistent with the current comprehensive plan in effect at the time of the conversion or diversion for the appropriate locality in which the property is located. This should minimally include written confirmation from the locality containing specific references to goals, objectives, strategies, future land use maps and needs identified in the plan.

3. Substitute Property

Pursuant to Section 10.1-1704 of the OSLA, substitute property is required whenever Easement Property is converted or diverted from its open-space use. DHR Easement Program staff may provide preliminary feedback regarding appropriate substitute property with the Project Proponent in advance of any formal purchase offer, however the final determination remains the responsibility of the Board. These options should be consistent with the Commonwealth's land protection priorities and reflect similar conservation values to those of the affected OSLA Easement. **Substitute land is required for both conversion and diversion Projects. Substitute lands are subject to all applicable Easement Program fees and application processes.**

A. Fair Market Value

The Project Proponent must demonstrate to the Board that the substitute land is of at least equal fair market value of the converted or diverted Easement Property. The appraisal must conform to USPAP and include fair market valuation of the converted or diverted Easement Property before and after the OSLA Easement was recorded, as well as the value of the proposed substitute land currently, and if encumbered.

B. Conservation Value

The Project Proponent shall include maps and photographs of the proposed substitute property and a complete description of the conservation values to be protected. A clear demonstration of conservation values comparable to the affected Easement Property is required.

C. Usefulness/ Location

The Project Proponent must provide information on the usefulness of the proposed substitute property as open space as well as the proximity of the proposed substitute land to the existing Easement Property.

D. Easement Application

The Project Proponent must submit a complete Easement Application Form, including required photographs, title commitment & insurance policy, maps, boundary survey, and Phase 1 Environmental Site Assessment (ESA), for the proposed substitute land.

E. Site Visit

DHR Easement Program staff will conduct a site visit to the proposed substitute land in advance of the staff presentation to the Board.

Due to the individuality of each OSLA Easement, DHR Easement Program staff may establish additional review requirements as necessary.

[Adopted by the Virginia Board of Historic Resources on [DATE, 2025].]

VIOLATION UPDATE

Easement Violation

Belgian Building, Virginia Union University, City of Richmond

Board Meeting Date: 12/10/2020		Staff: Megan Melinat	
Owner: Virginia Union University		City: Richmond	Acres: 3.492
Property Features and Current Use:			
<p>Listed individually in the Virginia Landmarks Register and the National Register of Historic Places, the Belgian Building was originally built as an exhibition building for the 1939 New York World's Fair. Designed by renowned Belgian architects Victor Bourgeois, Leon Stijnen, and Hugo van Kuyck under the directorship of Henry Van de Velde, the building soon became an important symbol of modernism and the International architectural movement. Van de Velde is known as one of the fathers of Modern Architecture and the <i>Art Nouveau</i>. It was intended to be dismantled at the conclusion of the fair and returned to Belgium. However, due to the onset of World War II, Belgium decided to give the building to an American college as a gesture of friendship. Virginia Union University (VUU), a private, historically African-American university was selected to receive the building, which was reconstructed on the Richmond campus in 1941. The temporary Belgian "Exhibition" Building was disassembled and the various materials and parts shipped to Richmond. During reconstruction, the layout was modified to fit the university's needs, but the three core sections of the building were retained. The Belgian Building is listed on the Historic American Building Survey (HABS VA-187) as a key example of the International architectural movement as it embraced new materials and technology. Sculptural relief panels on the exterior were sculpted by O. Jaspers and H. Purrez. The panels depict trade and culture in both Belgium and the Belgian Congo. Preservation of this building protects an internationally known and architecturally significant building. In addition, the Belgian Building provides full public access and is a highly visible landmark within the City of Richmond.</p> <p>The easement donation was a requirement of a \$340,000 National Park Service Save America's Treasure grant to fund the restoration of the property. The building is currently operated by Virginia Union University as an educational, institutional and community facility.</p>			
Easement Violation:			
<p>In early January 2020, DHR staff learned that four large internally illuminated signs were installed near the top of the tower portion of the Belgian Building and notified VUU that the unapproved installation was inconsistent with the provisions of the perpetual easement and the signs must be removed. VUU notified DHR of its intent to appeal this decision, despite the fact they had not submitted a project review request. The project review request was received on September 25, 2020 and was formally determined to be inconsistent with the easement provisions. The signs remain installed.</p>			
Pertinent Easement Terms and Restrictions:			
<p>The easement, conveyed to the VBHR by Virginia Union University in March 2010, includes the following restrictions:</p> <p>5. ALTERATIONS AND NEW CONSTRUCTION: The "Belgian Building" shall not be demolished or removed from the Property, nor shall it be materially altered, restored, renovated, extended, or increased or decreased in height, except in a way that would be in keeping with the historic character of the Property and consistent with the Secretary's Standards and provided that the prior written approval of Grantee to such actions shall have been obtained. This provision shall apply to the exterior of the "Belgian Building" and the interior steel structural framing...</p> <p>14. SIGNS: No sign, billboard, or outdoor advertising structure shall be displayed on the Property without the consent of Grantee, other than signs not exceeding nine square feet for any or all of the following purposes: (i) to state the name and address of the Property or Property owners, (ii) to provide information necessary for the normal conduct of any permitted business or activity on the Property, (iii) to advertise the Property for sale or rental, and (iv) to provide notice necessary for the protection of the Property and for giving directions to visitors.</p> <p>19. ENFORCEMENT: Grantee has the right to bring an action at law or in equity to enforce any or all of the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of this Deed of Easement except to the extent such condition thereafter changed in a manner consistent with the restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by temporary or permanent injunction. If the court determines that the Grantor failed to comply with this Easement, Grantor shall reimburse Grantee any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. Grantee does not waive or forfeit</p>			

the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee.

Easement Program Policy #7: Violations:

A violation is defined as (i) any action or event or lack of maintenance that has caused or has the potential to cause harm to the historic resources and features and/or the conservation values of the property that are protected by the easement, or (ii) any action, event or failure to act that conflicts with or contradicts any restriction or covenant contained in the easement.

- Proceeding with installation of four (4) large signs in the absence of DHR review is contradictory to the easement.

A Willful Violation is defined as “a violation that occurs when the property owner undertakes an action or fails to undertake an action in direct contradiction to a written directive, notice or requirement issued by DHR, acting on behalf of the Board, or the Board.”

- The owners were informed, in writing, by telephone and in person, of the need for DHR review and approval to ensure the proposed scope of work was consistent with the easement provisions, and given multiple opportunities to resolve the issue by removal of the signs from the tower. Alternative signage proposals consistent with the easement provisions would be considered.

Remediation:

DHR staff recommends the removal of the signs from their current location, for potential installation elsewhere on the VUU campus. Alternative sign proposals, to include projected illumination on the tower, would be considered by staff if proposed.

Designed in the International style by architects Victor Bourgeois and Leo Stijnen under the direction of renowned Belgian architect Henry van der Velde. It is a 41,104 square foot, three-sectioned building distinguished by a 150-foot bell tower. The sculptural relief panels were created by O. Jaspers and H. Purrez.

- 1939 Belgian Building constructed in New York City as the Belgian Pavilion for the World's Fair.
- 1941 Moved and reconstructed on the campus of Virginia Union University (VUU) following a competitive application process involving about two dozen schools.
- 1970 National Register description indicates "...slender slate-faced campanile-like tower, one corner of which is ornamented in glass blocks while the top is crowned with a distinctive louvered lantern."
- 1979 HABS photo documentation completed by Walter Smalling
- 2010 Donation of preservation easement to Virginia Board of Historic Resources following receipt of Save America's Treasure Grant (\$340,000) from the National Park Service to fund its restoration.
- Sept. 6, 2019 VUU receives \$500,000 grant from NPS African-American Civil Rights Grant Program for restoration of the building.
- Jan. 2, 2020 VUU installs four internally illuminated signs, one on each face of the Belgian Building tower.
- Jan. 8, 2020 DHR notifies VUU that the sign installation is inconsistent with easement provisions, requests scope of work, and the removal of the signs.
- Jan. 28, 2020 VUU notifies DHR of intent to appeal signage removal request.
- Feb. 5, 2020 VUU attorney response to DHR
- June 11, 2020 VUU and DHR meeting to discuss solutions
- June 12, 2020 DHR letter to VUU
- June 12, 2020 VUU letter to Governor Northam
- Sept. 25, 2020 VUU submits project review request for installation of signage
- Oct. 21, 2020 DHR letter to VUU stating project is inconsistent with the terms of the easement
- Dec. 10, 2020 Easement staff notification of Board of Historic Resources at its quarterly meeting. Dr. Allia Carter, Executive Vice President and COO of VUU presented to the Board, emphasizing the importance of the Belgian Building as a campus

focal point, as a “light in a dark time”. Attorney Dale Mullen, representing VUU also presented, advocating for retention of the signage to avoid a “return to the past”. Delegate Delores McQuinn expressed desire for a resolution between DHR and VUU. Board directed DHR Easement Staff to seek a remedy and report back at its March 2021 meeting.

- Jan. 29, 2021 Board of Historic Resources closed session meeting to discuss pending legal action.
- Mar. 18, 2021 Director Langan presented a draft mitigation plan to the Board of Historic Resources including: the addition of preservation section to VUU’s Master Plan; biannual monitoring of the unapproved signage; VUU sponsorship of two highway markers (VUU, Belgian Building); and payment of annual fee (\$50,000) for as long as the signs are installed. Plan to be memorialized in a MOA.
- June 17, 2021 Director Langan reports to the Board the mitigation plan aspects accepted by VUU: the addition of a preservation section to their master plan; biannual monitoring of the unapproved signage; and sponsorship of the two highway markers. VUU requested a reduction in the annual fee to \$25,000. The Board delegates Director Langan the authority and discretion to negotiate the terms of the mitigation settlement agreement and enter into that agreement.
- Dec. 9, 2021 Director Langan reports to the Board that following numerous discussions with the attorneys and Board Chair Tucker Lemon, DHR is close to executing the agreement. The agreement will require the approval of the Office of the Attorney General as well as the Governor.
- Sept. 30, 2022 Mitigation Agreement between VUU and the Board of Historic Resources executed. Agreement requires VUU to submit final draft of preservation portion of the updated Historic Master Plan for DHR review; required inspections; prompt removal of sign if structural or permanent damage is observed; annual payment of \$35,000 for each year the sign remains in place; VUU obligation to obtain and maintain \$70,000 Letter of Credit; and VUU sponsorship of two new historical highway markers within one year.

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- April 1, 2023 Severe weather event resulted in the detachment of multiple EIFS panels from the exterior of the tower. This material fell a significant distance, landing in part on the roof of the Belgian Building, causing damage. Some windows were also damaged by the flying debris. The building was partially exposed to the elements.
- May 4, 2023 DHR Staff and Director Langan attended an on-site meeting coordinated by ServePro restoration contractor to review the conditions and proposed scope of repairs. The proposed scope was extensive and involved the interior construction

of a crib wall to support the tower structure independently and full height exterior scaffolding to complete the exterior panel repairs.

June 28, 2023 VUU secured all necessary permits to conduct repairs to return the building to its pre-loss condition, using like materials.

Aug. 4, 2023 Crib walls and demolition of damaged materials complete.

Sept. 29, 2023 Scaffolding construction complete.

Nov. 21, 2023 DHR conducted site visit at the invitation of ServePro to review the visible deterioration of the structure due to prolonged exposure and confirm the damage needed to be addressed as part of the repairs.

July 31, 2024 Scaffolding removal begins. Repairs continue.



Belgian Friendship Pavilion, 1939 New York World's Fair

*(Continued on page 9)*



*January 2020*



*July 2024*



## MITIGATION AGREEMENT

THIS MITIGATION AGREEMENT ("Agreement") is dated as of AUGUST, 4, 2022 by and between VIRGINIA UNION UNIVERSITY ("VUU"), a Virginia nonstock corporation whose address is 1500 North Lombardy Street, Richmond, Virginia 23220, and the COMMONWEALTH OF VIRGINIA, BOARD OF HISTORIC RESOURCES ("VBHR"), a public board created by the Commonwealth of Virginia pursuant to Section 10.1-2203 of the Code of Virginia of 1950 ("Virginia Code") whose address is Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221.

## RECITALS

**WHEREAS** VUU is the owner in fee simple of certain real property situated in the City of Richmond, Virginia, at the intersection of North Lombardy Street and Brook Road having the street address of 2342 Brook Road, being within the Virginia Union University campus and containing in the aggregate 3.492 acres, more or less (the "**Property**"), which Property is further described in Attachment A to the Deed of Easement between VUU and VBHR, as grantor and grantee, respectively, dated March 2, 2010, and recorded on March 16, 2010, in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia (the "**Clerk's Office**") as Instrument #10-4526 (the "**Deed of Easement**");

**WHEREAS** the Property is subject to and encumbered by the Deed of Easement, pursuant to which VUU gave, granted and conveyed to VBHR a perpetual historic preservation and open-space easement in gross over, and the right in perpetuity to restrict the use of, the Property, including the Belgian Building, defined below, to the extent and on the terms set forth in the Deed of Easement (the "**Easement**");

**WHEREAS** the Property is the site of an institutional building commonly known as the Vann Memorial Tower, so named to honor Robert L. Vann, an illustrious alumnus of VUU, being the same institutional building defined and described in the Deed of Easement as the "**Belgian Building**";

**WHEREAS** the Belgian Building is of historical and architectural significance, together with its surrounding acreage has historical, scenic and open-space value, was designated as an historic landmark on the Virginia Landmarks Register on December 2, 1969 and the National Register of Historic Places on February 26, 1970 (the "**Registers**"), and is also listed as an historic site and single building in the City of Richmond Old and Historic District, which is protected by the City of Richmond Zoning Ordinance as established in Division 4, Section 114-930.5 of such ordinance and Section 930.7 of the Richmond City Code;

**WHEREAS** VUU and VBHR agreed to the Deed of Easement conveying the Easement provided therein to (i) ensure the preservation of the Property and the protection

of the historical and architectural features that led it to be placed on the Registers as well as certain “Conservation Values,” which historical and architectural features and Conservation Values are more fully set forth and defined in the Deed of Easement and the Baseline Documentation Report referenced in Section 1 of the Deed of Easement (the “**Baseline Documentation Report**”) and (ii) fulfill a requirement for VUU to receive a Save America’s Treasures Grant, Grant Agreement No. 51-05-HB-14909, in the amount of three-hundred and forty thousand (\$340,000.00) from the National Park Service, United States Department of the Interior, which grant VUU matched in the amount of \$145,714;

**WHEREAS** VUU and VBHR agreed that the Baseline Documentation Report accurately describes the condition and character of the Property, including the Belgian Building, as of March 2, 2010, that being the date of the Deed of Easement;

**WHEREAS** the Easement imposed certain restrictions on VUU’s use of the Property that are specified in the Deed of Easement to ensure the preservation of the Property and the protection of the aforementioned historical and architectural features and Conservation Values;

**WHEREAS** the Easement, among other things, requires VUU to maintain, preserve and protect the Property “as nearly as practicable” in its existing state at the time of the Easement’s conveyance, as shown in the Baseline Documentation Report, “except for changes that are expressly permitted” in the Deed of Easement;

**WHEREAS** Section 5 of the Deed of Easement states, in part: “The ‘Belgian Building’ shall not be . . . materially altered, restored, renovated, extended, or increased or decreased in height, except in a way that would be in keeping with the historic character of the Property and consistent with the Secretary’s Standards and provided that the prior written approval of Grantee to such actions shall have been obtained. This provision shall apply to the exterior of the ‘Belgian Building’ and the interior steel structural framing identified in paragraph 3(iv) above”;

**WHEREAS** Section 3(iv) of the Deed of Easement states: “The character-defining historic interior steel structural framing and steel curtain wall system shall not be altered or removed from the Property without the prior written approval of Grantee”;

**WHEREAS** Section 14 of the Deed of Easement states, in part: “No sign, billboard, or outdoor advertising structure shall be displayed on the Property without the consent of Grantee, other than signs not exceeding nine square feet . . .”;

**WHEREAS** subsequent to the date of the Deed of Easement, on or about January 2, 2020, VUU attached four (4) 295.2-square-foot, lighted signs, in the shape of VUU’s logo, to the exterior of the 165-foot Vann Memorial Tower that rises from the center of the Belgian Building, one sign on each of the Belgian Building’s four sides (the “**VUU Signage**”);

**WHEREAS** the VUU Signage was brought to VBHR's attention at its December 10, 2020 meeting;

**WHEREAS** the appearance and condition of the VUU Signage specifically and the Property of Concern (as defined below) generally have been accurately documented as of November 17, 2021, in the "**Belgian Building Annual Stewardship Report**," dated November 22, 2021, a copy of which is attached hereto as **Exhibit A**, and is incorporated herein by reference;

**WHEREAS** VBHR did not approve the installation of the VUU Signage and a dispute arose between VUU and VBHR over whether the VUU Signage violated the Easement;

**WHEREAS** at its March 18, 2021 meeting, VBHR proposed a mitigation plan with VUU whereby: (1) VUU would add a preservation section to VUU's master plan; (2) the VUU Signage would be monitored biannually; (3) VUU would sponsor two highway markers; and (4) VUU would pay an annual fee for so long as the VUU Signage remained in place;

**WHEREAS** at its June 17, 2021 meeting, VBHR delegated to the Director of the Virginia Department of Historic Resources ("**VDHR**") the authority and the discretion to negotiate the terms of a mitigation plan and settlement agreement and to enter into such plan and agreement with VUU;

**WHEREAS** the parties have agreed on terms for the mitigation plan proposed by VBHR and desire to enter into this Agreement to memorialize the mitigation plan;

**WHEREAS** the Easement is administered by VDHR on behalf of VBHR and this Agreement will also be administered by VDHR on behalf of VBHR;

**NOW, THEREFORE**, in consideration of the foregoing recitals, and the covenants and obligations in and the benefits to be derived from this Agreement, VUU and VBHR hereby agree as follows:

### **AGREEMENT**

1. **Recitals.** Subject to Section 23 of this Agreement, the foregoing recitals are true and correct and are incorporated herein by reference, as though fully set forth herein.

2. **Definitions.** The capitalized terms used, but not defined, in this Agreement shall have the same meaning as when used in the Deed of Easement.

3. New Master Plan. VUU is in the process of adopting a new Master Plan, and agrees to include a section therein that addresses preservation of the historical and architectural features of the Property, and to consult the 2010 Historic Master Plan prepared by Commonwealth Architects. Prior to adopting the new Master Plan, VUU shall provide to VDHR a copy of the section in the final draft that addresses preservation of the historical and architectural features of the Property. VDHR will have fifteen (15) days from receipt of the final draft to provide comments to VUU. VUU shall provide a copy of the section of the Master Plan that addresses preservation of the historical and architectural features of the Property, as adopted, to VDHR. However, nothing herein shall obligate VUU to adopt any particular provision regarding preservation of the Property or any other provision.

4. Inspection of Property of Concern; Opinions.

a. Definitions.

i. **“Inspector”** means an independent qualified, Virginia-licensed structural engineer or an independent qualified, Virginia-licensed architect.

ii. **“Property of Concern”** means the VUU Signage, the exterior of the Belgian Building and the interior steel structural framing referenced in paragraphs 3(iv) and 5 of the Deed of Easement.

iii. **“Opinion”** means a written opinion regarding (A) the structural effects of the VUU Signage on the Belgian Building including, without limitation, the direct effects and effects reasonably attributable to the VUU Signage such as wind load or snow load, and (B) whether the effects of the VUU Signage on the Belgian Building necessitate removal of the VUU Signage under the standard of Section 4(f)(ii) below. All Opinions shall be based upon standards and practices generally accepted in the Inspector’s field, and all measurements, observations, and calculations used in preparing the Opinions shall be included therein.

b. Inspector’s Observations. In addition to issuing an Opinion pursuant to this Section 4, if any Inspector observes or otherwise becomes aware of any activities directed toward the demolition or removal of any part of the Property of Concern, damage to the Property of Concern, or any material alteration, restoration, renovation, extension or change in height of any part of the Property of Concern, such Inspector shall promptly give written notice of the same to VBHR and VUU.

c. VUU Inspector; Inspection Period.

i. VUU shall retain an Inspector, at VUU’s sole cost and expense (the **“VUU Inspector”**), who has been approved in advance by VBHR to inspect the Property of Concern and issue an Opinion (a **“VUU Opinion”**). VUU shall make a written request to VBHR for approval of its retention of said VUU Inspector and the terms

of such agreement, which approval shall not be unreasonably conditioned, delayed, or withheld.

ii. On or after the Effective Date, the VUU Inspector shall enter the Property, upon reasonable notice to VUU, for the purposes of inspecting the Property of Concern and issuing a VUU Opinion. The VUU Inspector shall perform an inspection at least once during each “**Inspection Period**.” An Inspection Period is a repeating 180-day period that commences on the Effective Date. If for four (4) consecutive 180-day Inspection Periods, no Binding Opinion determines that the Property of Concern is suffering structural or permanent cosmetic damage as a result of the VUU Signage and that remediation of such damage or prevention of further said damage requires that the VUU Signage be removed, then the Inspection Periods shall be extended to annual periods, coinciding with the anniversary of the Effective Date. The VUU Inspector shall make the first inspection within sixty (60) days after the Effective Date.

iii. Within thirty (30) days after an inspection of the Property of Concern, the VUU Inspector shall provide to VUU and VBHR a VUU Opinion. If VBHR accepts the findings of a VUU Opinion, then within thirty (30) days after such VUU Opinion is delivered to VBHR, VBHR shall provide written notice to VUU that it accepts such VUU Opinion. If VBHR accepts such VUU Opinion, then such VUU Opinion shall be binding on the parties with respect to the Inspection Period for which it was issued.

d. VBHR Inspector.

i. If VBHR does not accept the findings of a VUU Opinion, then within thirty (30) days after such VUU Opinion is delivered to VBHR, VBHR may engage the services of an Inspector (the “**VBHR Inspector**”), at its sole cost and expense, to inspect the Property of Concern and provide an Opinion to VBHR and the VUU (a “**VBHR Opinion**”).

ii. Within thirty (30) days after the inspection of the Property of Concern, the VBHR Inspector shall provide to VUU and VBHR a VBHR Opinion. If VUU accepts the findings in such VBHR Opinion, then within thirty (30) days after such VBHR Opinion is delivered to VUU, VUU shall provide written notice to VBHR that it accepts such VBHR Opinion. If VUU accepts such VBHR Opinion, then such VBHR Opinion shall be binding on the parties with respect to the Inspection Period for which it was issued.

e. Inconsistencies; Third-Party Inspector.

i. If VUU does not accept the findings of a VBHR Opinion within thirty (30) days after such VBHR Opinion is delivered to VUU, then VUU and VBHR shall direct the VUU Inspector and the VBHR Inspector to mutually select a third-party Inspector (the “**Third-Party Inspector**”) to inspect the Property of Concern and

provide an Opinion to VBHR and the VUU within thirty (30) days after the Third-Party Inspector's inspection (the "**Third-Party Opinion**").

ii. If a Third-Party Inspector is engaged to inspect the Property of Concern and to provide the Third-Party Opinion, then VUU and VBHR shall each pay one-half of the cost of the Third-Party Opinion.

iii. The Third-Party Opinion shall be binding on the parties with respect to the Inspection Period for which it was issued.

f. Binding Opinion; Removal of the VUU Signage.

i. An Opinion that is binding on the parties with respect to the Inspection Period for which it was issued is referred to in this Agreement as a "**Binding Opinion.**"

ii. If any Binding Opinion determines that the Property of Concern is suffering structural or permanent cosmetic damage as a result of the VUU Signage and that remediation of such existing damage or prevention of further said damage requires that the VUU Signage be removed, then VUU shall promptly commence and undertake the removal of the VUU Signage and the restoration of the Belgian Building, as nearly as practicable, to the condition in the Baseline Documentation Report, in consultation with and subject to the prior approval of VBHR. VUU shall complete such removal and restoration within ninety (90) days of the date of the then-current Binding Opinion.

5. Annual Payment; Removal of VUU Signage; Letter of Credit.

a. Annual Payment. Within ten (10) business days of the Effective Date and annually on each anniversary of the Effective Date until such anniversary as the VUU Signage has been removed and the Belgian Building restored to VBHR's satisfaction, VUU shall make a lump sum payment to the Preservation Easement Fund, created by Virginia Code Section 10.1-2202.2, in the amount of Thirty-Five Thousand Dollars (\$35,000.00), payable in legal U.S. tender at the place of payment (the "**Annual Payment**").

b. Removal of VUU Signage. If on or prior to any such anniversary of the Effective Date (i) the VUU Signage has been removed from the Belgian Building and (ii) the Belgian Building has been restored, as nearly as practicable, to the condition documented in the Baseline Documentation Report, then VUU shall have no obligation to make any future Annual Payment. The manner, timing and method of the VUU Signage's removal, if any, shall be determined by VUU, subject to the prior written consent of VBHR, whose consent shall not be unreasonably withheld, conditioned or delayed.

c. Letter of Credit.

i. Obligation to Obtain Letter of Credit. VUU shall obtain an irrevocable standby letter of credit in the amount of \$70,000.00 from Truist Bank (“**Issuer**”) that names VBHR as beneficiary, in the form of **Exhibit B** hereto (the “**Letter of Credit**”). VUU shall deliver the signed, original Letter of Credit to VBHR when VUU delivers a signed, original of this Agreement to VBHR.

ii. Obligation to Maintain Letter of Credit. VUU shall maintain the Letter of Credit until (A) the VUU Signage has been removed from the Belgian Building and (B) the Belgian Building has been restored, as nearly as practicable, to the condition documented in the Baseline Documentation Report. If the Letter of Credit is terminated for any reason, except under Section 5(c)(iv) herein, VUU shall obtain a replacement Letter of Credit.

iii. Drawing on the Letter of Credit. If VUU fails to pay any Annual Payment within fifteen (15) calendar days of the Effective Date or any anniversary thereof, then VBHR may immediately draw Thirty-Five Thousand Dollars (\$35,000.00) on the Letter of Credit or replacement Letter of Credit.

iv. Termination of the Letter of Credit. If on or prior to any anniversary of the Effective Date (A) the VUU Signage has been removed from the Belgian Building and (B) the Belgian Building has been restored, as nearly as practicable, to the condition documented in the Baseline Documentation Report, then VBHR’s right to draw on the Letter of Credit or replacement Letter of Credit shall immediately terminate, without more, and VUU and VBHR shall direct Issuer to terminate the Letter of Credit or replacement Letter of Credit.

6. Sponsorship of Historical Highway Markers. Within one year of the Effective Date, VUU shall apply for the sponsorship of two (2) new historical highway markers on the Property, pursuant to Virginia Code Section 10.1-2209, to be erected at such locations as are mutually agreeable to the parties hereto. The historical highway markers shall be formulated to educate the public about the history of VUU and of the Belgian Building. VUU’s applications for the historical highway markers shall be adjudicated by the VBHR pursuant to Virginia Code Section 10.1-2209 on the same terms as those submitted by other sponsors. VUU shall bear the costs associated with sponsoring the historical highway markers on the same terms as other sponsors.

7. Enforcement and Removal of the VUU Signage.

a. If VUU is in compliance with the terms of this Agreement and the then-current Binding Opinion does not indicate that the Property of Concern is suffering either structural or permanent cosmetic damage as a result of the VUU Signage and that

remediation of existing said damage or prevention of further said damage requires that the VUU Signage be removed, then VBHR shall not exercise any right it has to take enforcement or other legal action under the Deed of Easement with respect to the VUU Signage, including (i) any right under paragraph 19 of the Deed of Easement related to the VUU Signage and (ii) any right (A) to require removal of the VUU Signage; (B) to recover damages arising from non-compliance related to the VUU Signage; (C) to enjoin non-compliance related to the VUU Signage by temporary or permanent injunction; or (D) in connection with the VUU Signage, to otherwise obtain reimbursement of costs of enforcement, costs of restoration, court costs, attorney's fees, or any other payments ordered by a court.

b. Should VBHR deem VUU to not be in compliance with any of the terms of this Agreement, a written notice identifying the alleged non-compliance shall be given to VUU as provided in Section 8 of this Agreement, along with a copy of this Agreement. VUU shall have a period of fifteen (15) calendar days from receipt of the written notice to cure the identified non-compliance before VBHR may exercise any of those rights referenced in Section 7(a).

c. For so long as the VUU Signage remains on the Belgian Building, VUU shall maintain the VUU Signage in a good state of repair and in the same appearance and condition documented in the Belgian Building Annual Stewardship Report and shall repair or clean any structural or cosmetic damage that results from the VUU Signage but that a Binding Opinion does not indicate necessitates removal of the VUU Signage.

d. VUU may elect, in its sole discretion, to remove the VUU Signage from the Belgian Building and to restore the Belgian Building, as nearly as practicable, to the condition documented in the Baseline Documentation Report. If VUU elects to remove the VUU Signage and restore the Belgian Building, VUU shall obtain VBHR's prior written approval of the means and method of the removal and restoration. VBHR may condition its approval on reasonable requirements that ensure the integrity of the Belgian Building during the removal and restoration process. Removal of the VUU Signage and restoration of the Belgian Building shall be considered complete when VBHR provides written notice to VUU that it is satisfied with the removal and restoration. Following the removal of the VUU Signage and restoration of the Belgian Building to VBHR's satisfaction, VUU shall maintain the Belgian Building, as nearly as practicable, in the condition documented in the Baseline Documentation Report to the extent required by the Deed of Easement including, without limitation, Sections 3(iv) and 5 of the Deed of Easement.

e. Notwithstanding any provision herein, following removal of the VUU Signage and restoration of the Belgian Building to VBHR's satisfaction, VBHR may enforce any and all terms in the Deed of Easement against the Property of Concern.



8. Notices/Requests. Whenever notices are to be given, requests are to be made or responses are to be provided under the terms of this Agreement, such notices, request and responses shall be deemed to have been given, made and provided on the date said notice, request or response is either hand-delivered or sent via a nationally-recognized overnight delivery service to the other party, as follows:

|                                                                                                                                                                 |                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If to VBHR to:                                                                                                                                                  | Virginia Department of Historic Resources<br>2801 Kensington Avenue<br>Richmond, Virginia 23221<br>Attention: Director                                     |
| With a required copy sent, via registered or certified mail (return receipt requested, first-class, postage prepaid, which shall not be sufficient notice), to: | Office of the Attorney General<br>202 North Ninth Street<br>Richmond, Virginia 23219<br>Attention: Section Chief, Real Estate Land Use Section             |
| If to VUU to:                                                                                                                                                   | Virginia Union University<br>Pickford Hall<br>1500 North Lombardy Street<br>Richmond, VA 23220<br>Attention: President                                     |
| With a required copy sent, via registered or certified mail (return receipt requested, first-class, postage prepaid, which shall not be sufficient notice), to: | Whiteford, Taylor & Preston L.L.P.<br>Two James Center<br>1021 East Cary Street, Suite 1700<br>Richmond, Virginia 23219<br>Attention: Dale G. Mullen, Esq. |

or in each case to such other address or addressee as any party hereto may from time to time designate to the other party hereto by notice given pursuant to this Section. Notices, requests and responses hereunder by either party may be given by counsel for such party.

9. Approvals. Whenever VBHR's approval is necessary under this Agreement, VUU shall submit in writing to VBHR, for VBHR's evaluation: (i) VUU's specific request identifying a proposed activity or use; (ii) relevant information about the proposed activity or use (including without limitation, photographs, plans, specifications, and designs, as applicable); (iii) a timetable for the proposed activity or use sufficient to permit VBHR to monitor it, and (iv) such other information as VBHR may reasonably request. VBHR will use reasonable efforts to respond to any written request of VUU within thirty (30) business days after VUU's receipt of such request. Nothing herein should be construed, however, to require VBHR to issue a final decision on such request within such thirty (30) business day period, provided that a final decision is issued as timely as is

practicable under the circumstances. In the event that VBHR does not respond in writing to VUU's written request within thirty (30) business days of receipt of such request, then VBHR will be deemed to have denied the request, and VUU may ask for reconsideration or submit a new request.

10. Dates. If the date on which a party to this Agreement is required to take any action is not a business day at the place of performance, the date for the performance of any such act shall be extended to the next succeeding business day. As used herein, "business day" shall mean any day that is not a Saturday, Sunday or federal or state holiday at the place of performance.

11. No Waiver. Failure by either party to insist upon or enforce any of its rights hereunder shall not constitute a waiver thereof.

12. Non-Assignable. Neither VUU nor VBHR shall have the right to assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. To effectuate an assignment properly consented to, the assignee must also assume in writing all remaining obligations under this Agreement of the assignor. Any assignment made without the prior written consent of the other party or the written assumption of remaining obligations by the assignor shall be null, void and of no effect. Any change in the status, nomenclature, or organization of VBHR or VDHR that is authorized by the General Assembly of the Commonwealth of Virginia shall not be deemed an assignment of this Agreement.

13. Governing Law. This Agreement and the rights and obligations hereunder of the parties hereto shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to any conflict of laws provisions.

14. Entire Agreement; Amendment. This Agreement, interpreted in light of the Deed of Easement and all exhibits attached thereto and incorporated therein, constitutes the final expression of, and contains the entire agreement between, VUU and VBHR with respect to the subject matter of this Agreement and supersedes all prior oral and/or written understandings. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument agreed to by both parties hereto and signed by such parties' authorized agent.

15. No Effect on Easement Terms; Subject of Agreement and VBHR's Rights.

a. No Effect of Easement Terms. All terms and conditions of the Easement are hereby ratified, and shall continue in full force and effect, and shall be deemed unchanged hereby. Notwithstanding anything herein, in no event shall this Agreement be deemed to constitute any acknowledgement, admission, agreement, stipulation or concession on the part of VUU, VDHR, VBHR, or the Commonwealth of

Virginia that the VUU Signage is or is not (i) reflective of the Property's documented state as set forth in the Baseline Documentation Report, or (ii) in keeping with the historic character of the Belgian Building.

b. Subject of Agreement and VBHR's Rights. This Agreement addresses the dispute between VUU and VBHR regarding the VUU Signage only. Nothing herein is a waiver of (i) VBHR's right to enforce the terms and provisions of the Deed of Easement with respect to any other violation under the Deed of Easement, or (ii) any other right of VBHR.

16. No Third-Party Beneficiaries. Nothing in this Agreement shall create any right in the public or in any third party to maintain any judicial proceeding against VBHR, VDHR, the Commonwealth of Virginia or VUU or to enforce this Agreement through any means including, but not limited to, judicial action. Additionally, nothing herein shall be construed to convey any new right to the public for access to or use of the Property or any part thereof, and VUU shall retain exclusive right to such access and use, subject only to the provisions of the Easement.

17. Authority to Bind. VUU has full power and authority to enter into, execute and bind itself and its agents to this Agreement, as evidenced by the signature of its agent below. Subject to the approvals required by Virginia Code Section 2.2-514, VBHR has full power and authority to enter into, execute, and bind itself and its agents, including VDHR, to this Agreement, as evidenced by the signature of its agent below.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns (as permitted above).

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and both of which together shall be for all purposes considered an original of this Agreement. Any required execution hereunder may be made electronically or sent by electronic mail, but shall be followed within three (3) business days by an original executed counterpart if requested by either party.

20. Administration and Enforcement by VDHR. Notwithstanding any other provision herein, this Agreement may be administered and enforced by VDHR on behalf of VBHR. The parties agree that VDHR may act on behalf of VBHR for any purpose related to this Agreement, including without limitation for issuing approvals and accepting Opinions.

21. No Admission. Nothing in this Agreement shall be deemed an admission of liability on the part of either party hereto.

22. Effective Date. The "**Effective Date**" of this Agreement is the date that this Agreement has been fully executed by both parties. VBHR shall give prompt written notice of its execution to VUU pursuant to the terms of Section 8.

23. Belgian Building Annual Stewardship Report. The Belgian Building Annual Stewardship Report is incorporated herein solely for the purpose of documenting the appearance and condition of the VUU Signage specifically and the Property of Concern generally as of November 17, 2021. The incorporation of the Belgian Building Annual Stewardship Report herein does not constitute an admission or agreement by VUU, VBHR, or VDHR regarding any violation or purported violation of the Deed of Easement or any other matter.

***[SIGNATURE PAGES TO FOLLOW]***

Witness the following signatures and seal:

VUU:

VIRGINIA UNION UNIVERSITY,  
a Virginia nonstock Corporation

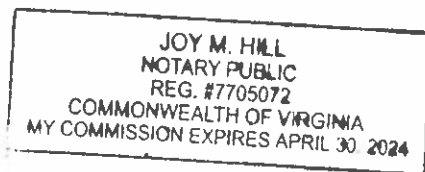
By: Allia L. Carter  
Name: Allia L. Carter  
Title: EVP/COO  
Date: 8/4/22

COMMONWEALTH of VIRGINIA                    )  
CITY of RICHMOND                                ), to-wit:

The foregoing Mitigation Agreement was acknowledged before me this 14<sup>th</sup> day  
of August 2022, by Joy M. Hill, acting in his/her  
capacity as Notary Public, on behalf of Virginia  
Union University.

Joy M. Hill  
Notary Public

My commission expires: April 30, 2024  
Notary Commission No. 7705072  
(SEAL)



**VBHR:**

COMMONWEALTH OF VIRGINIA  
BOARD OF HISTORIC RESOURCES,

By: *Julie V. Langan*  
Julie V. Langan  
Director, Commonwealth of Virginia,  
Department of Historic Resources

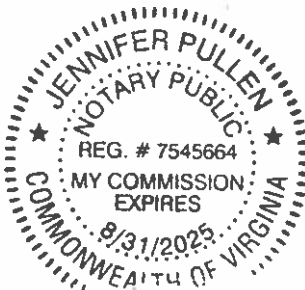
Date: 9/30/2022

COMMONWEALTH of VIRGINIA                    )  
CITY of RICHMOND                                ), to-wit:

The foregoing Mitigation Agreement was acknowledged before me this 30 day  
of September, 2022, by Julie V. Langan, acting in her capacity as Director,  
Virginia Department of Historic Resources, on behalf of the Commonwealth of Virginia,  
Board of Historic Resources.

*Jennifer K. Pullen*  
Notary Public

My commission expires: 8.31.25  
Notary Commission No. 7545664  
(SEAL)



**EXHIBIT A**

**“Belgian Building Annual Stewardship Report,” dated November 22, 2021**

(See attached.)

# Mitigation Agreement Exhibit A



## Annual Stewardship Report

Site Visit Date: 11/17/2021  
DHR Staff: B. McDonald  
Report Prepared By: B. McDonald

| Property Information                                  |                      |                                |
|-------------------------------------------------------|----------------------|--------------------------------|
| Property Name: Belgian Building                       | File No. 127-0173_ep | Tax Map ID: N0000740001 (por.) |
| City: Richmond                                        | Acreage: 3.492       | Co-Holder: None                |
| Property Address: 2342 Brook Road, Richmond, VA 23220 |                      |                                |

| Owner Contact Information                                                                           | <input type="checkbox"/> New |
|-----------------------------------------------------------------------------------------------------|------------------------------|
| Owner Name(s): Virginia Union University; Contact: David Gordon, Vice President of Capital Projects |                              |
| Owner Mailing Address: 1500 North Lombardy Street, Richmond, VA 23220                               |                              |
| Phone: (804) 342-3943                                                                               | Email: degordon@vu.edu       |

| Previous Documentation                                                  | Date; Staff             |
|-------------------------------------------------------------------------|-------------------------|
| Baseline Documentation Report (BDR) <input checked="" type="checkbox"/> | March 2010; W. Musumeci |
| Present Condition Report (PCR) <input type="checkbox"/>                 |                         |
| Previous Site Visit <input checked="" type="checkbox"/>                 | 5/23/19; B. McDonald    |

| Alterations Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Describe any changes since the previous site visit:</b></p> <p>-In early January 2020, DHR staff learned that four large internally illuminated signs were installed near the top of the tower portion of the Belgian Building and notified VUU that the unapproved installation was inconsistent with the provisions of the perpetual easement and the signs must be removed. VUU notified DHR of its intent to appeal this decision, despite the fact they had not submitted a project review request. The project review request was received on September 25, 2020 and was formally determined to be inconsistent with the easement provisions. The signs remain installed and a mitigation agreement between the University and DHR is currently in negotiation.</p> <p>-During this site visit, staff noted the presence of three newly installed signs denoting the building name around the periphery of the building footprint. These signs were installed since the previous site visit and without the review and approval of DHR's easement program. Additional information is provided below.</p> <p>-The University was in the process of installing two new scoreboards within the basketball arena at the time of the site visit.</p> <p><b>Describe any plans the owner has for the property:</b></p> <p>-The University has received a grant that will be used for the installation of a new HVAC system as well as a new mezzanine level for the field house/basketball arena. <b><i>All proposed work within the arena/field house should be coordinated with DHR easement staff for review and approval once these project plans are finalized.</i></b></p> |

| Existing Conditions-Exterior Features of the Main Historic Building: |                                   |
|----------------------------------------------------------------------|-----------------------------------|
| Building Element                                                     | Condition Assessment              |
| 1. Roof System                                                       | Good-No Issues Observed           |
| 2. Exterior Walls/Foundation                                         | Maintenance Recommended-see below |



|                                   |                                   |
|-----------------------------------|-----------------------------------|
| 3. Porches/ Open Balconies        | Good-No Issues Observed           |
| 4. Windows/Window Frames/Shutters | Good-No Issues Observed           |
| 5. Doors and Door Frames          | Good-No Issues Observed           |
| 6. Sculpture Relief Panels (3)    | Maintenance Recommended-see below |

| Existing Conditions-Interior Features of the Main Historic Building: |                                   |
|----------------------------------------------------------------------|-----------------------------------|
| Building Element                                                     | Condition Assessment              |
| 7. Stairs/Staircases                                                 | Good-No Issues Observed           |
| 8. Interior Walls and Ceilings                                       | Good-No Issues Observed           |
| 9. Doors and Door Frames                                             | Good-No Issues Observed           |
| 10. Flooring                                                         | Good-No Issues Observed           |
| 11. Mechanical Systems (HVAC and Other)                              | Good-No Issues Observed           |
| 12. Fire Prevention & Security                                       | Maintenance Recommended-see below |

| Overall Conditions                   |                                     |                                     |                                     |
|--------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| If yes, describe in Comments section | Yes                                 | No                                  | Described Below                     |
| 13. Excessive trash or refuse?       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 14. Unapproved ground disturbance?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 15. New signage?                     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 16. New roads and/or trails?         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 17. Land use changes?                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

| Public Access Reported Since Previous Site Visit:                                                         |
|-----------------------------------------------------------------------------------------------------------|
| The building is part of the Virginia Union University campus and is open to students and campus visitors. |

| Comments:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>2. Exterior Walls/Foundation:</b> The building foundation is CMU clad in rectangular slate tiles (1 to 4 courses depending on location). Evidence of cracking or loss of individual slates was observed in isolated locations around the structure. Walls are clad in suspended, rectangular unglazed terra cotta clay tiles with tinted mortar between. Although some damaged tiles remain, several of the missing or broken tiles noted in during the 2017 and 2019 site visits have been repaired or replaced in-kind.</p> <p>Portions of the east, west, and north elevations are covered in EIFS, which has been damaged in several places. The east elevation of the Theater Building is covered in white stucco which is generally in good condition.</p> <p>The tower is clad in EIFS with louvered vents at the carillon. The cladding appears to be in good condition where visible. Two decorative terra cotta bas-relief panels are located at the base of the tower. Some cracking, open joints, and water damage was noted on these panels. A third relief panel located on the south elevation of the Arts Building has been recently restored and is in good condition. University staff reports that no recent restoration work has occurred on the two panels located at the base of the tower.</p> <p>Drainage systems (scuppers, downspouts, and feedouts) are present. Some were visibly damaged, and some feedouts were unattached or inappropriately placed to direct water away from the building. <b><i>Downspouts should be repaired to working order and feedouts reattached to appropriately direct water away from the building.</i></b></p> |

**6. Sculpture Relief Panels:** As noted above, the building contains three bas-relief panels depicting scenes of culture and trade with the Belgian Congo. Two of these panels are located at the base of the bell tower, while the other is located on the south elevation of the Arts Building. The panel on the south elevation has been recently restored and is in good condition. The two panels at the base of the tower are exhibiting signs of deterioration including cracking, water damage and open joints between the panels. *Similar restoration efforts should be completed for these panels so that additional damage to these elements does not occur.*

**12. Fire Prevention and Security:** *Ensure that the existing wiring and electrical system for the lighted signs mounted at the top of the bell tower is adequate and up to existing City code and does not present a potential fire hazard.*

**14. Unapproved Ground Disturbance:** During the site visit, staff noted the presence of three recently installed signs around the periphery of the building. Each of these signs are mounted on concrete bases and denote the name and function of the adjacent building component. Each of these signs are also flanked by a pair of solar powered spotlights for nighttime illumination. *These signs were installed without review and approval from DHR's easement program. As the 2010 deed of easement contains protections for archaeological resources (Stipulation 8: Archaeology) and requires review of all ground-disturbing activities, DHR requires that the University submit additional information about this project.*

**15. Signage:** *As noted above, three new signs have been installed with the conservation area of the easement without DHR's review and approval. The 2010 deed of easement also contains restrictions pertaining specifically to the installation of and overall size of any signage within the property (Stipulation 14: Signs). According to this restriction, each sign may be no larger than nine (9) square foot in total.*

*As these signs were installed without DHR's knowledge or approval, we formally request the following information from the University:*

- *A detailed time line for the project (e.g. when were the signs installed?)*
- *The total size (in square footage) of each sign*
- *A description of the ground disturbance footprint for each sign. Where any other areas disturbed beyond the footprint of the concrete pad that serves as the base for each sign?*

*Please forward this information to DHR by Wednesday, December 15, 2021.*

|              |                                                 |                                                                      |                                          |
|--------------|-------------------------------------------------|----------------------------------------------------------------------|------------------------------------------|
| Attachments: | <input checked="" type="checkbox"/> Photographs | <input checked="" type="checkbox"/> Maps (Photo point, aerial, etc.) | <input type="checkbox"/> Other Describe: |
|--------------|-------------------------------------------------|----------------------------------------------------------------------|------------------------------------------|

**Site Visit Photographs**  
**Taken By: B. McDonald    On: 11/17/2021**



*Photo 1. Southeast elevation of field house/gymnasium, looking northwest, Belgian Building, 11/17/21*



*Photo 2. View of courtyard and tower, looking northwest, Belgian Building, 11/17/21*





*Photo 3. Detail of southeast facing panel on tower base, Belgian Building, 11/17/21*



*Photo 4. Detail of northeast facing panel on tower base, Belgian Building, 5/23/19*



*Photo 5. Detail of typical deterioration on bas-relief panel, Belgian Building, 11/17/21*



*Photo 6. Detail of typical deterioration on bas-relief panel, Belgian Building, 11/17/21*





*Photo 7. Detail of typical deterioration on bas-relief panel, Belgian Building, 11/17/21*



*Photo 8. Detail of tile repair on southwest façade of gymnasium building, Belgian Building, 11/17/21*



*Photo 9. View of bell tower with signage, looking west, Belgian Building, 11/17/21*



*Photo 10. View of bas-relief panel on southwest façade of arts building, looking northeast, Belgian Building, 11/17/21*





*Photo 11. View of courtyard and gymnasium building, looking north, Belgian Building, 11/17/21*



*Photo 12. View of entrance to arts building on northwest facade, looking east, Belgian Building, 11/17/21*





*Photo 13. View of entrance to exercise/training facility on northwest facade, looking east, Belgian Building, 11/17/21*



*Photo 14. View along northwest façade, looking west-southwest, Belgian Building, 11/17/21*





*Photo 15. View of new signage near southern corner of arts building, Belgian Building, 11/17/21*



*Photo 16. View of new signage near northeast corner of field house/gymnasium building,, Belgian Building, 5/23/19*





**Photo 17. View of new signage near northern corner of field house/gymnasium building, Belgian Building, 11/17/21**



**Photo 18. Detail of steel trusses on second floor of arts building, Belgian Building, 11/17/21**



*Photo 19. Upward view of bell tower structure from base, Belgian Building, 11/17/21*



*Photo 20. Electrical junction box for illuminated signage (located at base of bell tower), Belgian Building, 11/17/21*





*Photo 21. Detail of new signage mounts at top of bell tower, Belgian Building, 11/17/21*



*Photo 22. Detail of signage support beams and louvers, Belgian Building, 11/17/21*



*Photo 23. Detail of electrical wiring box located at base of each signage support structure, Belgian Building, 11/17/21*





127-0173\_ep Belgian Building  
Photopoint Map





**Belgian Building**  
**City of Richmond, Richmond Quad**  
**DHR ID: 127-0173\_ep**

 Architecture Resources  
 DHR Easements



Created By: B. McDonald November 22, 2021  
 Sources: VDHHR 2020, ESRI 2020, VDOT 2020, VGIN 2020  
 Records of the Virginia Department of Historic Resources (DHR) have been gathered over many years and the representation depicted is based on the field observation date and may not reflect current ground conditions. The map is for general illustration purposes and is not intended for engineering, legal or other site-specific uses. The map may contain errors and is provided "as-is". Contact DHR for the most recent information as data is updated continually.



**DHR**  
 Department of Historic Resources

2018 Aerial Image (via VGIN)



**Exhibit B**

Form of Letter of Credit



Letter of Credit and Trade Services  
7701 Airport Center DR, Suite 2600  
Greensboro, NC 27409  
Tel: 866-228-4685 Opt 1  
Fax: 336-605-5830  
SWIFT: BRBTUS33GBO

IRREVOCABLE STANDBY LETTER OF CREDIT 75000702

JULY 29, 2022

APPLICANT:  
VIRGINIA UNION UNIVERSITY  
1500 NORTH LOMBARDY STREET  
RICHMOND, VA 23220

BENEFICIARY:  
VIRGINIA BOARD OF HISTORIC  
RESOURCES  
2801 KENSINGTON AVENUE  
RICHMOND, VA 23221  
ATTN: DIRECTOR, VDHR

FOR: USD 70,000.00 (US DOLLARS SEVENTY THOUSAND)

DATE OF EXPIRATION: 8/1/2023  
PLACE OF EXPIRATION: OUR COUNTERS

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 75000702 IN YOUR FAVOR FOR ACCOUNT OF THE ABOVE-REFERENCED APPLICANT AVAILABLE BY YOUR DRAFTS DRAWN ON US PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF THE AMOUNT REFERENCED ABOVE WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND THE FOLLOWING DOCUMENT:

BENEFICIARY'S SIGNED AND DATED STATEMENT READING AS FOLLOWS: "WE HEREBY DEMAND PAYMENT IN THE AMOUNT OF \$\_\_\_\_\_ UNDER TRUIST BANK IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER 75000702 DATED JULY 29, 2022."

PARTIAL AND MULTIPLE DRAWINGS ARE ALLOWED.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AN AMENDMENT FOR 12 MONTHS FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SEND NOTICE TO YOU BY OVERNIGHT COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. LETTER OF CREDIT NON-EXTENSION NOTICE SHALL BE SENT TO THE BENEFICIARY AT THE ADDRESS AS STATED ABOVE, OR AS AMENDED. ALL DRAFTS MUST REFERENCE THIS NUMBER AND ISSUE DATE OF THIS CREDIT.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 PUBLICATION 590.

WE HEREBY AGREE WITH YOU THAT ALL DRAFTS DRAWN IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS SPECIFIED ABOVE TO THE BELOW ADDRESS ON OR BEFORE CURRENT EXPIRY DATE OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE.



Letter of Credit and Trade Services  
7701 Airport Center DR, Suite 2600  
Greensboro, NC 27409  
Tel: 866-228-4685 Opt 1  
Fax: 336-605-5830  
SWIFT: BRBTUS33GBO

ALL DOCUMENTS ARE TO BE REMITTED TO:  
TRUIST BANK, LETTER OF CREDIT DEPARTMENT, 7701 AIRPORT CENTER DRIVE,  
SUITE 2600, GREENSBORO, NC 27409.

UNLESS OTHERWISE INSTRUCTED HEREIN, ALL CORRESPONDENCE AND INQUIRIES  
REGARDING THIS TRANSACTION SHOULD BE DIRECTED TO OUR LETTER OF CREDIT  
AND TRADE SERVICES CUSTOMER SERVICE CENTER AT THE ADDRESS PROVIDED IN  
THIS LETTER. PLEASE INDICATE OUR REFERENCE NUMBER IN ALL YOUR  
CORRESPONDENCE OR TELEPHONE INQUIRIES.

SINCERELY,  
TRUIST BANK

  
AUTHORIZED SIGNATURE

Arnee Maier  
Assistant Vice President